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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,717	08/17/2001	Matthias Huetsch	30014200-1013	6215

7590

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EXAMINER

WU, QING YUAN

ART UNIT

PAPER NUMBER

2194

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/932,717

Applicant(s)

HUETSCH ET AL.

Examiner

Qing-Yuan Wu

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-26 are pending in the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following terms lack antecedent basis:

- i. The at least one load metric- claim 25 line 13.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 5, 7-10, 14-17, 22, and 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by He et al (hereafter He) (U.S. Patent 6,671,259).

6. He was cited in the last office action.

7. As to claim 5, He teaches the invention as claimed including a method in a data processing system having a first and a second load balancing server and having a plurality of processing servers, the method comprising the steps of:

receiving by the first load balancing server a request to perform a processing [col. 3, lines 55-56; 21, Fig. 2];

sending the request from the first load balancing server to the second load balancing server [col. 3, lines 44-49; 23, Fig. 2]

determining a load of each of the plurality of processing servers by the second load balancing server [col. 4, lines 5-12] and selecting by the second load balancing server a selected one of the plurality of processing servers that is suitable for performing the processing, wherein the selection is performed based on the load of each of the plurality of processing servers [col. 4, lines 41-46; 25, Fig. 2]; and

sending by the second load balancing server to the selected one of the plurality of processing servers an indication to perform the processing [col. 4, lines 1-4, 46-49].

8. As to claims 7-8, He teaches the invention as claimed including receiving a plurality of load metrics that originate from the plurality of processing servers at the second load balancing server and encoding the at least one load metric in the request [col. 4, lines 6-12].

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9. As to claims 9-10, He teaches the invention as claimed including wherein the first load balancing server is a load balancing slave [15, Fig. 1], and wherein the second load balancing server is a load balancing master [17a, 17b, Fig. 1].

10. As to claims 14-17, these are data processing system claims that correspond to the method claims 5, 7, and 9-10. Therefore, they are rejected for the same reason as claims 5, 7, and 9-10 above.

11. As to claims 22, and 24-25, these are computer readable medium claims that correspond to the method claims 5, and 7-8. Therefore, they are rejected for the same reason as claims 5, and 7-8 above.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-4, 6, 11-13, 18-21, 23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over He as applied to claim 5 above.

14. As to claim 1, this claim is rejected as claim 5 above, in addition He does not specifically teach sending an identifier of the selected one of a plurality of servers from the load balancing master to the load balancing slave and establishing by the load balancing slave a communication link between the selected server and the client to perform the processing. However, He disclosed a scenario where the function of the arrangement for communications between client and one of the servers depends on the load of the LB server. The LB server either allows the client system to directly contact a specific server or provides specific server information on a per session basis [col. 3, lines 49-54] and the communication link is establish and manage by the LB server [col. 7, lines 37-41; 251, Fig. 5; 271, Fig. 6]. In addition, He disclosed a LB server and LBS selector combination [col. 10, lines 33-67; Fig. 7].

15. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that He's LB selector (or LB server and LBS selector combination) has the capability of establishing and routing a communication link between a selected server and a client by identifying the selected server and client to the LB selector, and doing so would dramatically decrease the load off the LB server.

16. As to claims 2 and 6, these claims are rejected for the same reason as claims 1 and 5 above.

17. As to claims 3-4, these claims are rejected for the same reason as claims 7-8 above.

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18. As to claims 11-13, these are data processing system claims that correspond to the method claims 1, and 3-4. Therefore, they are rejected for the same reason as claims 1, and 3-4 above.

19. As to claims 18-21 these are computer readable medium claims that correspond to the method claims 1-4. Therefore, they are rejected for the same reason as claims 1-4 above.

20. As to claim 23 this is a computer readable medium claim that corresponds to the method claim 6. Therefore, it is rejected for the same reason as claim 6 above.

21. As to claim 26 this is a load balancer claim that corresponds to the method claim 1. Therefore, it is rejected for the same reason as claim 1 above.

Response to Arguments

22. Applicant's arguments filed 4/21/05 have been fully considered but they are not persuasive.

23. In the remarks, Applicant argued in substance that:

- a. *He* fails to disclose or even suggest a first load balancing server that receives a request to perform processing and sends the request to a second load balancing server. The request is not received at a load balancing serve, but is instead received at the load balancing selector LBS.

24. Examiner respectfully traversed Applicant's remarks:
25. As to point (a), given the broadest reasonable interpretation of the first load balancing server explicitly recited in the claims 5, 14 and 22 which is an intermediate device that receive and send a client request to a second load balancing server, the Examiner believed that the load balancing server selector as been taught by He is functionally equivalent to applicant's load balancing server, therefore this limitation have been met (i.e. A server is defined by Microsoft Computer Dictionary Fifth Edition as a computer running administrative software that controls access to the network and its resources, and provides resources to computers functioning as workstations on the network).

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qing-Yuan Wu whose telephone number is (571) 272-3776. The examiner can normally be reached on 8:30am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Qing-Yuan Wu

Examiner

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SUPERVISORY PATENT EXAMINER
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